

# EXHIBIT 5

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DISTRICT  
CASE NO.: 1:19-CV-05768-EEC

KEVIN ROSSMAN, Individually and For  
Others Similarly Situated,  
Plaintiff,  
v.  
EN ENGINEERING, LLC,  
Defendant.

CONFERENCE CALL

January 10, 2020

1:58 p.m. - 2:39 p.m.

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APPEARANCES:

On Behalf of the Plaintiff:

JOSEPHSON DUNLAP, LAW FIRM  
11 Greenway Plaza, Suite 3050  
Houston, TX 77046  
(713) 352-1100  
mjosephson@mybackwages.com  
BY: MICHAEL JOSEPHSON, ESQUIRE  
(Appeared telephonically)

JOSEPHSON DUNLAP, LAW FIRM  
11 Greenway Plaza, Suite 3050  
Houston, TX 77046  
(713) 352-1100  
jlomax@mbwages.com  
BY: JULIE LOMAX, ESQUIRE  
(Appeared telephonically)

JOSEPHSON DUNLAP, LAW FIRM  
11 Greenway Plaza, Suite 3050  
Houston, TX 77046  
(713) 352-1100  
BY: CARL FITZ, ESQUIRE  
(Appeared telephonically)

On Behalf of the Defendant:  
KOEHLER DINKEL, LLC  
900 S. Frontage Road, Suite 300  
Woodridge, IL 30517  
(630) 505-9939  
rkoehler@kdllclaw.com  
BY: RENEE KOEHLER, ESQUIRE  
(Appeared telephonically)  
KOEHLER DINKEL, LLC  
900 S. Frontage Road, Suite 300  
Woodridge, IL 30517  
(630) 505-9939  
sdinkel@kdllclaw.com  
BY: STEPHANIE DINKEL, ESQUIRE  
(Appeared telephonically)

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(Thereupon, the following proceedings were had:)

MR. JOSEPHSON: Okay, whenever you're ready,  
Court Reporter. I mean, no one needs to be sworn  
in or anything that I know of but we can certainly  
make announcements just so we've got that down,  
okay?

COURT REPORTER: Okay. Ready to go.

MR. JOSEPHSON: All right. Are you ready?

COURT REPORTER: Ready to go.

MR. JOSEPHSON: Okay. Renee, Stephanie, y'all  
ready?

MS. KOEHLER: We are, yes.

MR. JOSEPHSON: Okay, great. All right. So  
for the Plaintiff's side we have Michael Josephson,  
Carl Fitz and Julie Lomax.

MS. KOEHLER: Okay. And for defense side, are  
you ready for that?

COURT REPORTER: Ready.

MS. KOEHLER: Okay. We have Renee Koehler, K-  
O-E-H-L-E-R, and Stephanie Dinkel, D-I-N-K-E-L.

COURT REPORTER: Okay.

MR. JOSEPHSON: All right. Great. And, all  
right, so, Renee, Stephanie, thanks for giving us  
this window today and we'll cover what we can and  
then pick up on Monday but we do appreciate y'all's

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availability. And so I think that the deficiency  
letter that we sent y'all is a good starting place  
for this conference and we can certainly walk  
through it in the order in which we've laid out  
these issues if that's okay.

MS. KOEHLER: Yes. And, again, for clarity,  
your January 7, 2020 deficiency letter, correct?

MR. JOSEPHSON: That's right. January 7, 2020  
dealing with your -- the set of discovery that  
y'all -- you guys served on December 20th.

MS. KOEHLER: And, you know, just for the  
court reporter -- can I just clarify for the court  
reporter, this is Renee Koehler.

MR. JOSEPHSON: Oh, sure, go ahead.

MS. KOEHLER: Yeah, just in case you're having  
a hard time figuring out who's talking on our end.

COURT REPORTER: I was just going to say that.  
I was just going to say is this Michael and Renee  
speaking right now?

MS. KOEHLER: For the most part it probably  
will be an if, for some reason, it's not we'll make  
sure the person identifies themselves.

COURT REPORTER: Perfect. Thank you so much.

MR. JOSEPHSON: All right. So, Renee, I'm  
going to kind of -- I'll talk to you and,

<p style="text-align: right;">Page 5</p> <p>1 Stephanie, chime in as you feel appropriate. So in our  2 discovery deficiency letter the first issue we  3 raised was the use of the global general objections  4 and our concern set forth in our letter was that  5 one, the use of general objections is inappropriate  6 under the rules but also, as a practical matter,  7 when you have these objections and then they're  8 read into everything it makes it difficult to know  9 what you are truly objecting to. And so we would  10 ask that you withdraw those general objections.  11 And to the extent that you have objections to the  12 requests, that you make them specifically in  13 response to each discovery request.  14 MS. KOEHLER: Okay. So I just want to, you  15 know, clarify that, Michael, that our discovery  16 responses were given prior to seeing your class  17 certification motion where the -- your punitive  18 class has been narrowed. So in line with the  19 narrowing of that, and while we don't agree, and  20 you know this, we don't agree that all the  21 inspectors should be included, but notwithstanding  22 those objections, I will -- I've agreed that I'm  23 going to go back and amend our discovery responses  24 and this might help with a lot of the different  25 areas. But I'm going to go back and amend the</p>	<p style="text-align: right;">Page 6</p> <p>1 discovery responses, including most likely withdrawing  2 the general objections now that we feel comfortable  3 that there's been an identified class. And so  4 you'll see in the amendments that we're going to be  5 omitting those and we'll be more detailed with the  6 specific responses to what objections we have.  7 MR. JOSEPHSON: Okay. I appreciate that. So  8 with respect to the general objections, you agree  9 to withdraw them and to include whatever specific  10 objections you might have in the actual body of the  11 response to the interrogatory or the request? Is  12 that fair?  13 MS. KOEHLER: Yes. Correct.  14 MR. JOSEPHSON: Okay. And what is your ETA on  15 serving amended discovery responses?  16 MS. KOEHLER: Oh, we'll probably talk about  17 that a little bit more detailed as to the reasoning  18 but my hope is -- I already have, in line with our  19 discussion that we had earlier in the week and my  20 e-mail -- Taylor and I's e-mails back and forth --  21 in line with some of the issues that I've talked to  22 my client about and that we've agreed that while we  23 don't agree with the three-year statute of  24 limitations, we're going to supplement our  25 discovery for the three-year period and then now</p>
<p style="text-align: right;">Page 7</p> <p>1 with this narrowed class, again, while we don't agree  2 that it's all inspectors that are similarly  3 situated, we're going to go ahead and give that  4 discovery.  5 MR. JOSEPHSON: Sure.  6 MS. KOEHLER: So with my -- we're mindful of  7 the fact that you do have a 30(b)(6) scheduled for  8 the 27th so --  9 MR. JOSEPHSON: Right.  10 MS. KOEHLER: -- our goal is to get most of  11 these documents to you by the 17th but I will have,  12 I think, the list that you're looking for that has  13 the inspectors by inspector type with their  14 information as far as like their employee clock  15 number; similar to what we gave you on the weld  16 inspectors. I hope to have that to you Tuesday or  17 Wednesday. The latest would be Wednesday. And  18 that's when I can serve on you the amended actual  19 interrogatory responses and the request to produce,  20 just with the understanding that it's taking some  21 time for them to pull all of the -- like the daily  22 time records for all the inspectors. But they've  23 been working on this since we resolved, you know,  24 that issue with you.  25 MR. JOSEPHSON: Sure. Okay. So when you e-</p>	<p style="text-align: right;">Page 8</p> <p>1 mailed us earlier in the week you had hoped you would  2 have that supplementation today and what I'm  3 hearing is that y'all have been working on it, it's  4 taking some time, and now you expect to have that  5 to us sometime next week and I think I heard  6 Tuesday? Is that right?  7 MS. KOEHLER: For the list -- yeah, Tuesday  8 for the list and the then the documents are going  9 to be trickling in to go with the list, such as the  10 payroll information and the timesheets. That's  11 what's taking a little bit of time and let me  12 explain why. First of all, they're going back and  13 filling in the gaps on the three-year period for  14 the weld inspectors. There was a different payroll  15 service between 2015 and 2018 so they're pulling  16 from two different services so that's taking a  17 little bit of time.  18 MR. JOSEPHSON: And that's fine. And then I  19 heard you say that you hoped to have your amended  20 responses by the 17th; is that right?  21 MS. KOEHLER: Yeah. But I actually think I'm  22 going to be able to get them to you around the same  23 time I give you the list. I just want to make --  24 MR. JOSEPHSON: That'd be great.  25 MS. KOEHLER: Yeah, I'm doing my best to get</p>

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1 it to -- get at least the official responses that are  
2 amended along with that list by Tuesday of next  
3 week.

4 MR. JOSEPHSON: Okay. And that's the 14th.

5 MS. KOEHLER: Correct.

6 COURT REPORTER: Is that -- who's speaking  
7 right now? Was that Julie? Was that Stephanie?  
8 I'm sorry?

9 MS. KOEHLER: No, it's still Renee.

10 COURT REPORTER: Oh, it's still Renee? Okay.

11 MS. KOEHLER: Sorry.

12 COURT REPORTER: That's okay.

13 MR. JOSEPHSON: Okay. And we appreciate that.  
14 So I think that addresses the issue with the  
15 general objections.

16 The next one is the -- our request that you  
17 include withholding statements if you are  
18 withholding documents subject to objections that  
19 you're asserting and let us know what your position  
20 is on that request.

21 MS. KOEHLER: Yeah. We will do that as well  
22 in the amended responses.

23 MR. JOSEPHSON: Okay. Great. All right. And  
24 so moving to the -- what we called the improper  
25 limitations on the class definition, class

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1 discovery and relevant time periods, it's my  
2 understanding that for purposes of the class  
3 definition and that -- and for the relevant time  
4 period that you have agreed, subject to your  
5 objections, to go back the full three-year time  
6 period and that you are now going to provide  
7 information as to all inspectors as opposed to the  
8 weld inspectors that you had limited it to  
9 previously. Is that fair?

10 MS. KOEHLER: Yes. For purposes of discovery,  
11 and as you said, without waiting our objections, we  
12 are going to supplement to go back for the full  
13 three-year period of time that you've requested for  
14 the weld inspectors and then when we produce the  
15 new information on the other inspectors, that will  
16 also be for the three-year period of time.

17 MR. JOSEPHSON: For all the inspectors? So,  
18 in other words --

19 MS. KOEHLER: Correct.

20 MR. JOSEPHSON: -- we're dealing with all of  
21 the inspectors and for the entire statutory time  
22 period?

23 MS. KOEHLER: Yes.

24 MR. JOSEPHSON: Okay. That's great. And I do  
25 know that as part of our discussion the other day,

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1 we did request that certain topics utilize a longer  
2 statute of limitations, or not even statute of  
3 limitations, a longer relevant time period; those  
4 topics being good faith, willfulness, the decision  
5 to treat these folks as exempt and why and so on.  
6 Do you know if your supplementation of discovery  
7 will include that longer statute of limitations  
8 time period for those topics or is that something  
9 that we still need to kind of work through or  
10 clarify?

11 MS. KOEHLER: So this is still Renee. We do  
12 need to do a little more work. I appreciate you  
13 guys identifying which topic areas you would like  
14 to go to a 10-year statute of limitations; however,  
15 we feel that, again, 10 years is too long of a time  
16 period. But I do think we should discuss it again  
17 once you get these documents because you'll see  
18 that the inspector position was contemplated from  
19 the period of time of 2011. So I think we can talk  
20 about that once you see the documents that we're  
21 going to supplement. And maybe for those  
22 particular topic areas we can agree on the 2011  
23 period of time, you know, without waiving any  
24 future objections, just for purposes of the  
25 30(b)(6).

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1 MR. JOSEPHSON: And when you say the --

2 MS. KOEHLER: And --

3 MR. JOSEPHSON: I'm sorry, go ahead, Renee. I  
4 didn't mean to cut you off.

5 MS. KOEHLER: And, again, that is mainly going  
6 to the, you know, affirmative defenses that we have  
7 and the issue of willfulness.

8 MR. JOSEPHSON: Right. And, Renee, what I was  
9 asking, you said the inspector position was  
10 contemplated in 2011. Does that mean that it was  
11 created? I just want to make sure I understand  
12 what contemplated means and that there isn't any  
13 confusion there.

14 MS. KOEHLER: With reference -- yeah, sorry, I  
15 cut you off. With reference to pay structure and  
16 issues relevant to Mr. Rossman, you know, arguably  
17 relevant to his claim and our defenses, that time  
18 period you'll see there's going to be a specific  
19 document with a 2011 date of how the compensation  
20 structure was devised.

21 MR. JOSEPHSON: Okay. And so as part of the  
22 supplemental production you're going to include the  
23 documentation that relates to how the compensation  
24 practice was, you know, came to being or was  
25 implemented?

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1 MS. KOEHLER: I wouldn't use the term "practice,"  
2 but, yes, we will be giving you that specific  
3 document. And once you get that next week we're  
4 more than willing to have another conversation as  
5 that pertains to the 30(b)(6) deposition.

6 MR. JOSEPHSON: Okay. All right. And do you  
7 know, just generally, is EN relying on the advice  
8 of counsel in connection with its compensation  
9 practices for the inspectors?

10 MS. KOEHLER: Yeah, I think you asked in there  
11 to either withdraw the defense or produce the  
12 documents so after some discussion with the client,  
13 we're going to be producing the documents, you  
14 know, to the best extent that we can that's not  
15 privileged for other, you know, they'll be heavily  
16 redacted if there's other privileged communications  
17 that don't pertain to this lawsuit and inspectors.  
18 But, yeah, we -- EN Engineering has agreed to  
19 produce even the privileged documents that pertain  
20 to its affirmative defense.

21 MR. JOSEPHSON: This would be for like good  
22 faith and willfulness?

23 MS. KOEHLER: Correct.

24 MR. JOSEPHSON: And not to be --

25 MS. KOEHLER: And we know -- we know that

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1 we're not relying exclusively on those documents; we're  
2 also relying on the 2017 Department of Labor audit.

3 MR. JOSEPHSON: Sure. No, I understand that.  
4 But to be clear, is EN relying on an advice of  
5 counsel defense as part of its good faith,  
6 willfulness affirmative defenses in the case?

7 MS. KOEHLER: Yeah, you'll see that in the --  
8 you'll see the details of that in the specific  
9 discovery responses.

10 MR. JOSEPHSON: Okay.

11 MS. KOEHLER: And you'll also see -- I'm  
12 probably jumping ahead a little bit but you'll also  
13 see --

14 MR. JOSEPHSON: Sure.

15 MS. KOEHLER: -- in the supplemental responses  
16 where we'll detail out the people who were involved  
17 in the decision-making process as to the exempt  
18 status of --

19 MR. JOSEPHSON: Okay.

20 MS. KOEHLER: -- you know, Mr. Rossman's  
21 position.

22 MR. JOSEPHSON: And when you say his position,  
23 are you referring to the inspector position as a  
24 whole?

25 MS. KOEHLER: Yes.

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1 MR. JOSEPHSON: Just -- okay. Okay.

2 MS. KOEHLER: Yes.

3 MR. JOSEPHSON: So we'll look for that  
4 hopefully next week. And then it kind of -- that  
5 dovetails into the privilege log. You had asserted  
6 a privilege objection I would say mostly throughout  
7 the discovery responses or certainly in a large  
8 portion of them. Do you anticipate -- well, do you  
9 know when you'll be able to provide us with the  
10 privilege log?

11 MS. KOEHLER: Yeah, I'll give you at the same  
12 time that I give you our amended discovery  
13 responses. And just so you know, the privilege was  
14 asserted with a very wide class that you originally  
15 had in your complaint so we're obviously going to  
16 narrow the privilege, you know, with respect to,  
17 you know, our objections and disclose the privilege  
18 communications that go to the inspector position.

19 MR. JOSEPHSON: Sure, I mean, it does help.  
20 But in fairness, I mean, it was asserted in  
21 response to interrogatories dealing with  
22 affirmative defenses, not just interrogatories or  
23 requests pertaining the class issue but, you know,  
24 kind of information that you are relying on in  
25 support of certain defenses that have been pled.

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1 And so --

2 MS. KOEHLER: Correct.

3 MR. JOSEPHSON: And so, you know, okay. But  
4 whatever you contend is covered by that privilege,  
5 that'll be logged in a way that we can at least  
6 identify what's being withheld, how many documents,  
7 the time period, and, you know, the folks that were  
8 involved.

9 MS. KOEHLER: Yes. And you'll see that  
10 there's going to be more produced than what would  
11 actually make the privilege log so --

12 MR. JOSEPHSON: Okay.

13 MS. KOEHLER: Yes.

14 MR. JOSEPHSON: Okay.

15 MS. KOEHLER: And I'll serve that at the same  
16 time that I serve the amended discovery responses.

17 MR. JOSEPHSON: Okay. And that's appreciated.  
18 And I assume, you know, we -- the communications  
19 that you've had with your client post-lawsuit,  
20 those aren't things that you're planning to log?

21 MS. KOEHLER: No, I'm -- no, not at all.

22 MR. JOSEPHSON: Okay. All right.

23 MS. KOEHLER: You're not --

24 MR. JOSEPHSON: The next --

25 MS. KOEHLER: Sorry, let's stop -- you're not

<p style="text-align: right;">Page 17</p> <p>1 expecting that I'm presuming?</p> <p>2 MR. JOSEPHSON: No, I'm not expecting that.</p> <p>3 Based on what I know now I'm not so if that changes</p> <p>4 I'll reach out and explain why I think our position</p> <p>5 has changed.</p> <p>6 MS. KOEHLER: Okay.</p> <p>7 MR. JOSEPHSON: The next topic was the</p> <p>8 verification.</p> <p>9 MS. KOEHLER: Oh, yeah. So you guys know,</p> <p>10 too, that you haven't verified your discovery, nor</p> <p>11 has any attorney signed off on your discovery</p> <p>12 responses so --</p> <p>13 MR. JOSEPHSON: What do you mean?</p> <p>14 MS. KOEHLER: I haven't -- maybe we missed it</p> <p>15 but I didn't see a verification --</p> <p>16 MR. JOSEPHSON: Okay.</p> <p>17 MS. KOEHLER: Or even an attorney -- there's</p> <p>18 like a Certificate of Service signed but not --</p> <p>19 nobody signed off on your discovery responses.</p> <p>20 MR. JOSEPHSON: I -- well, okay. So I see a</p> <p>21 verification and I have no reason to believe that</p> <p>22 it wasn't sent to you but I will certainly send it</p> <p>23 to you after our call. And then on the discovery</p> <p>24 responses, I mean, it says "Respectfully submitted"</p> <p>25 and then it's got a slash and it says, "Taylor</p>	<p style="text-align: right;">Page 18</p> <p>1 Jones" and the same signature on the Certificate of</p> <p>2 Service. Was there something else that you</p> <p>3 expected or think you're entitled to?</p> <p>4 MS. KOEHLER: Can you direct me to that?</p> <p>5 Because we have a Certificate of Service on Page 2.</p> <p>6 Like the first page is Plaintiff's Objections and</p> <p>7 Responses to Discovery Requests and then there's</p> <p>8 the Certificate of Service where Taylor, you know,</p> <p>9 had her block signature line on. And then we've</p> <p>10 got -- maybe we're missing something here because</p> <p>11 then it goes all the way to Page 24 and then</p> <p>12 there's -- but there's no signature, there's</p> <p>13 nothing.</p> <p>14 MR. JOSEPHSON: I mean, the version that I'm</p> <p>15 looking at right now has a signature on Page 2</p> <p>16 above the Certificate of Service.</p> <p>17 MS. KOEHLER: Oh, I see what you're saying.</p> <p>18 Kind of on the cover page? I guess I've never seen</p> <p>19 that before.</p> <p>20 MR. JOSEPHSON: Yeah, the second page where</p> <p>21 it's signed off on and -- but I -- and it's in --</p> <p>22 there's 24 pages and so this is Page 2. And then</p> <p>23 in terms of the verification, I would have assumed</p> <p>24 that it was sent but just out of an abundance of</p> <p>25 caution, I did just e-mail it to you and so you</p>
<p style="text-align: right;">Page 19</p> <p>1 should have --</p> <p>2 MS. KOEHLER: Okay.</p> <p>3 MR. JOSEPHSON: You should have that now and</p> <p>4 if you think that there's still some problem, just</p> <p>5 let me know.</p> <p>6 MS. KOEHLER: Thank you.</p> <p>7 MR. JOSEPHSON: And so back to --</p> <p>8 MS. DINKEL: This is Stephanie speaking. I</p> <p>9 would just say that I'm looking at the Page 2 here</p> <p>10 and it appears that Taylor's signature is regarding</p> <p>11 that she's serving that on us and not -- yeah,</p> <p>12 because it says on the very first page 2 Defendant</p> <p>13 and then it says, "Pursuant," blah, blah, blah,</p> <p>14 "Plaintiff serves his responses." So we took that</p> <p>15 as it was a signature on the Certificate of</p> <p>16 Service.</p> <p>17 MR. JOSEPHSON: Well, there's a -- there is a</p> <p>18 signature on the Certificate of Service but there's</p> <p>19 also a signature above that as well. So you have a</p> <p>20 total of two signatures from the attorney. Similar</p> <p>21 to the two signatures that you provided on 19 and</p> <p>22 20 of your discovery.</p> <p>23 MS. DINKEL: Okay. I've just never seen a</p> <p>24 signature at the beginning before signing off by an</p> <p>25 attorney and responses that follow but --</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. JOSEPHSON: Yeah. That's okay.</p> <p>2 MS. DINKEL: And, I guess, maybe the -- that's</p> <p>3 okay. The verification maybe just didn't make it</p> <p>4 in because literally we have 24 pages but the PDF</p> <p>5 didn't have a verification unless something</p> <p>6 happened on --</p> <p>7 MR. JOSEPHSON: That's fine.</p> <p>8 (Crosstalk)</p> <p>9 MR. JOSEPHSON: It's been sent now so --</p> <p>10 MS. DINKEL: Okay.</p> <p>11 MR. JOSEPHSON: -- you do have it. But we</p> <p>12 don't have EN's verification and so when do you</p> <p>13 think that'll be provided?</p> <p>14 MS. KOEHLER: We'll give you the verification</p> <p>15 for the current discovery responses I'm hoping -- I</p> <p>16 wanted it -- I was expecting to have it today but</p> <p>17 we'll send it over to you on Monday.</p> <p>18 MR. JOSEPHSON: Okay.</p> <p>19 MS. KOEHLER: And we'll make sure it's the</p> <p>20 verification with the amended responses as well.</p> <p>21 MR. JOSEPHSON: That's correct.</p> <p>22 COURT REPORTER: And this is Renee speaking?</p> <p>23 MS. KOEHLER: I'm sorry, yes, it's Renee.</p> <p>24 COURT REPORTER: Okay. It's okay.</p> <p>25 MR. JOSEPHSON: And that's fine. Thank you</p>



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1 for letting us know that. And then so we raised the  
2 issue about the supplementation where in different  
3 places in your discovery responses you indicated  
4 you were supplementing. You now told us that you  
5 plan to supplement next week with documents. Are  
6 there other requests that you are still working on  
7 supplementing or do you have some sense of what's  
8 coming next week and what may come in the week or  
9 so that follow?

10 MS. KOEHLER: Yeah, so the -- one of the  
11 outstanding issues is we're trying to go through  
12 Mr. Rossman's e-mails just to make sure that we  
13 haven't missed anything and we were having a hard  
14 time trying to retrieve that. So if we're able to  
15 get that information, you know, that's one of the  
16 supplements that we plan on giving to you.

17 MR. JOSEPHSON: Okay. I am glad that you  
18 raised that. I guess there's -- there does seem to  
19 be a little bit of a deficiency in the e-mail  
20 production. We have a few of them that came with  
21 the Illinois Department of Labor investigation but  
22 I haven't seen a lot of other e-mails, you know. I  
23 guess -- and that may be because you're planning to  
24 supplement and it may be that you're still  
25 identifying custodians and so on but is this a good

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1 place to maybe talk about what's being done in terms of  
2 the supplementation and what's happening with the  
3 overall ESI production?

4 MS. KOEHLER: So once we do the search of --  
5 we've already attacked, you know, our end regarding  
6 Mr. Rossman but once we do a search of his actual  
7 e-mail box that will complete that.

8 MR. JOSEPHSON: Okay. You'll -- that'll  
9 complete the anticipated supplementation of his e-  
10 mails?

11 MS. KOEHLER: Correct. Well, e-mails  
12 regarding him or inspectors, the lawsuit. You'll  
13 see too there'll be some e-mails that are going to  
14 be produced with the privilege log so you'll have  
15 that next week.

16 MR. JOSEPHSON: Okay. Do you --

17 MS. KOEHLER: However, with the caveat I'm not  
18 sure on being able to retrieve Mr. Rossman's e-  
19 mails. So we're still waiting on that.

20 MR. JOSEPHSON: And what do you mean by that?  
21 Just elaborate if you can.

22 MS. KOEHLER: So we're trying to figure out  
23 how we can access because his is a no longer active  
24 account. We're trying to figure out how we can  
25 access his account. We have e-mails from him but

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1 we don't know e-mails necessarily other than the ones,  
2 you know, we're not sure exactly if there's  
3 anything else on his e-mails that might be  
4 responsive.

5 MR. JOSEPHSON: Okay. Has that been an issue  
6 with respect to any other custodians that y'all  
7 have looked for or that you've tried to access  
8 their e-mails?

9 MS. KOEHLER: No.

10 MR. JOSEPHSON: Okay. And do you -- are you  
11 able to tell me who the custodians are; whose  
12 documents you've looked at?

13 MS. KOEHLER: I mean, not off the top of my  
14 head, no.

15 MR. JOSEPHSON: Okay. Do you think that we  
16 can schedule a time next week to maybe talk about  
17 the ESI that's in this case and what might be  
18 relevant, how the information is stored, and how  
19 it's best to be able to produce it?

20 MS. KOEHLER: Maybe we can fit that in in our  
21 call on Monday but --

22 MR. JOSEPHSON: Okay.

23 MS. KOEHLER: If not we'll schedule --

24 MR. JOSEPHSON: Yeah, that's fine. At least a  
25 preliminary call on ESI. And if you have a sense

Page 24

1 of who the custodians are and can disclose that before  
2 Monday I think that would be helpful.

3 MS. KOEHLER: Well, I'm going to be pretty  
4 busy supplementing the discovery so I can't make  
5 you any promises that you'll get that before  
6 Monday.

7 MR. JOSEPHSON: Okay. Will you be able to  
8 tell us Monday at least when you think you might  
9 have a list of custodians put together?

10 MS. KOEHLER: I don't know. Let's address it  
11 on Monday.

12 MR. JOSEPHSON: And do you know enough about  
13 how the company stores its communications and  
14 documents and the things that might kind of fall  
15 within the document definition in Rule 26 to be  
16 able to have a meaningful conversation on Monday?  
17 And I just raise that, Renee, to say if you wanted,  
18 you know, a few more days to be able to talk to the  
19 company a little bit more to find out about their  
20 databases and storage systems and how one would go  
21 about searching for a responsive document, search  
22 terms and so on, I'm okay with that. I don't want  
23 to force y'all into a discussion that you're not  
24 prepared to have on that topic and so I guess what  
25 I would say is we can plan on talking about it

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1 Monday but if you feel like when we have that call that  
2 you're not prepared to have an ESI discussion, I  
3 don't mind pushing it off until, you know, later in  
4 the week.

5 MS. KOEHLER: Yeah, so we most likely will be  
6 pushing it off because we have more, you know,  
7 additional things that we were already scheduled to  
8 discuss and I'm running on my 1:30 timeframe here.  
9 So --

10 MR. JOSEPHSON: Sure.

11 MS. KOEHLER: -- let's try to cover as many  
12 things as we can first on the January 7th letter  
13 for Monday.

14 MR. JOSEPHSON: Okay. And do you know what  
15 days you might have available next week to be able  
16 to kind of follow up on the ESI discussion?

17 MS. KOEHLER: No, I don't. So we'll, again,  
18 visit that on Monday.

19 MR. JOSEPHSON: Do you want us to send you the  
20 days that we're available so that you can see if  
21 any of those work for your schedule?

22 MS. KOEHLER: That would be great and I think  
23 I would prefer more towards the end of the week.

24 MR. JOSEPHSON: Okay.

25 MS. KOEHLER: Because I know my morning -- in

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1 fact, probably Thursday or Friday would be better.

2 MR. JOSEPHSON: Okay. I know you've got to  
3 run so just last question. Do you anticipate  
4 sending us any specific objections that you might  
5 have to the 30(b)(6) today?

6 MS. KOEHLER: So really the 30(b)(6)  
7 objections really stem with what we talked about at  
8 the beginning of the call regarding that extended  
9 timeframe for those particular questions.

10 MR. JOSEPHSON: Right. I thought you had told  
11 us that you might have specific objections to the  
12 topics now that --

13 MS. KOEHLER: No.

14 MR. JOSEPHSON: -- we've talked and clarified  
15 some things and so if you did I wanted to make sure  
16 we had time to talk about them. And so if you're  
17 saying you don't because we've resolved the areas  
18 that y'all were concerned about then that's fine.  
19 But if you do I think it would be helpful to get  
20 them in advance of our call on Monday.

21 MS. KOEHLER: Yeah, no, our intent of our  
22 prior call, you know, was to get those things  
23 ironed out. So the two remaining issues though are  
24 that time period and then we do still have an issue  
25 on the third party -- the contract -- the client

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1 contract. And just so you know, I -- my client is  
2 legally prohibited from divulging the information  
3 of the customers and I noticed that you had  
4 specifically requested in subpoena requests with  
5 Ameren directly for the same documents so my client  
6 cannot produce those without having a potential  
7 breach of contract action.

8 MR. JOSEPHSON: You're talking about the MSAs?

9 MS. KOEHLER: Yeah, you're referring to the  
10 Master Service Agreement? Yes.

11 MR. JOSEPHSON: Okay. And so they can't  
12 produce them because they've got some kind of  
13 confidentiality with their client; is that --

14 MS. KOEHLER: Yes. You know, in particular,  
15 the contents of that agreement.

16 MR. JOSEPHSON: Are there parts of the  
17 agreement that can be produced without those  
18 concerns that you might have about confidentiality  
19 or is it your view that the whole Master Services  
20 Agreement is confidential for some reason?

21 MS. KOEHLER: So my position is I can't  
22 disclose that agreement period because of the  
23 confidential information within it. And, quite  
24 frankly, I don't want my client to take a chance of  
25 disclosing any of the provisions and being

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1 subjected to a lawsuit, especially if you guys have a  
2 subpoena for that very information directly to that  
3 third party.

4 MR. JOSEPHSON: And that's fine. I mean, I  
5 guess -- I don't mind getting it from the third  
6 party if you have these concerns. I would just  
7 ask, you know, have you or your client reached out  
8 to those third parties and asked if the documents  
9 can be produced subject to the protective order  
10 that we have in the case?

11 MS. KOEHLER: So yes, I've given the  
12 appropriate notice about the discovery request and  
13 really that's all I can say.

14 MR. JOSEPHSON: And I'm sorry, but I -- the  
15 notice to -- you're talking about to the third  
16 party or your client? I didn't catch that.

17 MS. KOEHLER: To the third party.

18 MR. JOSEPHSON: But are you instructing the  
19 third party not to produce it or are you telling  
20 them that they can produce it subject to the  
21 protective order?

22 MS. KOEHLER: No, I haven't given any opinion  
23 as to whether or not they can produce their  
24 document.

25 MR. JOSEPHSON: Okay. But have you asked or



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1 do you plan to ask if it can be produced or if y'all  
 2 can produce it subject to the protective order that  
 3 we have?  
 4 MS. KOEHLER: No, I have not. It's -- so the  
 5 terms of the agreement don't even allow that.  
 6 MR. JOSEPHSON: I'm sorry, the agreement  
 7 itself prevents you from asking if it can be  
 8 produced or you just have to -- just clarify. I  
 9 don't want to argue with you about it. Just tell  
 10 me so that I kind of understand where you're coming  
 11 from. Are you saying that the terms of the  
 12 agreement itself prevent you from even asking the  
 13 client if it can be produced subject to a  
 14 protective order?  
 15 MS. KOEHLER: No, that's not what I'm saying.  
 16 What I'm saying is I can't produce it period so,  
 17 you know, whether or not the client chooses to  
 18 produce it has nothing to do with what I may or may  
 19 not ask.  
 20 MR. JOSEPHSON: Okay. But that's what, I  
 21 guess, I was confused on. I thought you said that  
 22 the terms of the agreement prevent you from even  
 23 asking the client --  
 24 MS. KOEHLER: No. No, no, no. No.  
 25 MR. JOSEPHSON: Okay.

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1 MS. KOEHLER: -- easily do that as well.  
 2 MR. JOSEPHSON: Yeah, I will and perhaps we  
 3 making that offer and you making that offer to them  
 4 will expedite the production of the responsive  
 5 documents.  
 6 MS. KOEHLER: So are we still scheduled then  
 7 for our call on Monday?  
 8 MR. JOSEPHSON: That's right.  
 9 MS. KOEHLER: Okay. Do -- are there other  
 10 things that we need to discuss on Monday though  
 11 regarding your January 7th, 2020 letter?  
 12 MR. JOSEPHSON: Yeah, I mean, we have -- we've  
 13 gone through the first part that addressed kind of  
 14 the general deficiencies and then the second part  
 15 are the specific deficiencies that we start with on  
 16 Page 4.  
 17 MS. KOEHLER: So -- and we -- we're still  
 18 open, obviously, to a call so we can still do that  
 19 but --  
 20 MR. JOSEPHSON: Okay.  
 21 MS. KOEHLER: Maybe I can even --  
 22 MR. JOSEPHSON: That works for us.  
 23 MS. KOEHLER: Yeah, maybe I can even try to  
 24 get some of these amendments -- the amended  
 25 documents to you before then. I'm not making any

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1 MS. KOEHLER: No. But --  
 2 MR. JOSEPHSON: But you -- go ahead.  
 3 MS. KOEHLER: So if I may? The terms of the  
 4 agreement would prevent me from even producing it  
 5 pursuant to a protective order.  
 6 MR. JOSEPHSON: Sure. And my question was a  
 7 little different. It was have you or your client  
 8 reached out to the third party to see if they would  
 9 allow those agreements to be produced subject to a  
 10 protective order?  
 11 MS. KOEHLER: I provided notice and, you know,  
 12 that's all that I'm willing to provide you at this  
 13 time. And I'm already seven minutes late.  
 14 MR. JOSEPHSON: Sure. No, I understand that.  
 15 Well, if you will let the third party know that we  
 16 are fine maintaining the confidentiality of the  
 17 agreement subject to the protective order and maybe  
 18 that'll alleviate the need for a dispute over this.  
 19 MS. KOEHLER: So you --  
 20 MR. JOSEPHSON: Because we have no trouble  
 21 keeping it confidential.  
 22 MS. KOEHLER: So you have also issued  
 23 discovery directly to Ameren, for example. I think  
 24 you could --  
 25 MR. JOSEPHSON: Right.

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1 promises but I just think it might be streamlined.  
 2 MR. JOSEPHSON: That's fine.  
 3 MS. KOEHLER: It might be streamlined.  
 4 MR. JOSEPHSON: If you do and we can eliminate  
 5 some of those that would be great with us and we  
 6 would certainly, you know, work quickly to do that  
 7 before the call. But let's keep the call for now  
 8 and if we can cancel because everything's been  
 9 taken care of or streamline it, you know, that's  
 10 definitely fine with us and appreciated. Okay?  
 11 MS. KOEHLER: Yeah. And so just so we're  
 12 clear; what time do you guys have that call at?  
 13 MR. JOSEPHSON: I just -- as you were talking  
 14 I just exited out of my computer but I think you  
 15 proposed the time and we accepted.  
 16 MS. KOEHLER: Oh, it's 2:00.  
 17 MR. JOSEPHSON: It's at 2:00. 2:00 on Monday.  
 18 MS. KOEHLER: Okay, that sounds great.  
 19 MR. JOSEPHSON: Okay. Well, you guys have a  
 20 nice weekend, all right?  
 21 MS. KOEHLER: You too. Thanks everybody.  
 22 COURT REPORTER: Thank you.  
 23 MR. JOSEPHSON: All right.  
 24 (Thereupon, the conference concluded at 2:39  
 25 p.m.)

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1 CERTIFICATE OF REPORTER  
2 STATE OF FLORIDA  
3 COUNTY OF MIAMI-DADE  
4  
5 I, Tareva Jumpp, Court Reporter, certify that  
6 I was authorized to and did report the conference call  
7 of Kevin Rossman, Individually and For Others Similarly  
8 Situated vs. EN Engineering, LLC; and that the  
9 transcript is a true and correct record of my notes.  
10 I further certify that I am not a relative,  
11 employee, attorney, or counsel of any of the parties,  
12 nor am I a relative or employee of any of the parties'  
13 attorneys or counsel connected with the action, nor am I  
14 financially interested in the action.  
15 Dated this 24th day of January 2020.  
16  
17  
18 \_\_\_\_\_  
19 Tareva Jumpp, Court Reporter  
20  
21  
22  
23  
24  
25

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1 A P P E A R A N C E S  
2 FOR THE PLAINTIFFS:  
3 Mr. Michael Josephson  
4 Ms. Taylor Jones  
5 Mr. Carl Fitz  
6 JOSEPHSON DUNLAP LAW FIRM  
7 11 Greenway Plaza, Suite 3050  
8 Houston, Texas 77046  
9 (713) 352-1100  
10 FOR THE DEFENDANT EN ENGINEERING, LLC:  
11 Ms. Renee Koehler (telephonically)  
12 Ms. Stephanie Dinkel (telephonically)  
13 KOEHLER DINKEL, LLC  
14 900 S. Frontage Road, Suite 300  
15 Woodridge, Illinois 60517  
16 (630) 505-9939  
17  
18  
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20  
21  
22  
23  
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1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF ILLINOIS  
3 EASTERN DISTRICT  
4 CASE NO.: 1:19-CV-05768-EEC  
5  
6 KEVIN ROSSMAN, Individually and For  
7 Others Similarly Situated,  
8 Plaintiff,  
9 v.  
10 EN ENGINEERING, LLC,  
11 Defendant.  
12 \* \* \* \*  
13 CONFERENCE CALL  
14  
15 JANUARY 13, 2010  
16  
17 \* \* \* \*  
18  
19 THIS TRANSCRIPTION OF CONFERENCE CALL  
20 was taken regarding the above-styled and numbered  
21 cause on the 13th day of January, 2020, from 2:00 PM  
22 to 2:55 PM, transcribed by Lea Abbott Sturm,  
23 Certified Shorthand Reporter, in and for the State  
24 of Texas, at Josephson Dunlap Law Firm, 11 Greenway  
25 Plaza, Suite 3050, Houston, Texas 77046.

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1 MR. JOSEPHSON: All right. So this is  
2 a continuation of our discovery deficiency call from  
3 last week. On behalf of the plaintiffs is Michael  
4 Josephson, Taylor Jones, and Carl Fitz.  
5 MS. DINKEL: On behalf of defendants,  
6 Stephanie Dinkel and Renee Koehler.  
7 MR. JOSEPHSON: Okay. All right. So  
8 last week we made it through kind of the general  
9 issues and so we're picking up today with the  
10 specific deficiencies set out in the January 7th  
11 deficiency notice. And so this starts on page 4 of  
12 our letter.  
13 So I'm going to go in order just like  
14 I did the other day.  
15 So the first topic and corresponding  
16 discovery requests are the good faith/willfulness  
17 request and objections to the time period. And  
18 looking at Interrogatory No. 3 -- and, again, not --  
19 just to kind of repeat but not, you know, completely  
20 start over on this, we did discuss some of the  
21 limitations last week on the issue of good faith and  
22 willfulness.  
23 And my understanding is that the  
24 position at issue was -- I think your word was  
25 "contemplated" or "came into inception" sometime in

<p style="text-align: right;">Page 37</p> <p>1 2011. And so for purposes of this interrogatory and  2 the corresponding request, can we agree that the  3 time period for responding for these topics will be  4 2011 to the present?  5 MS. DINKEL: Are you referring only to  6 Interrogatory No. 3 when you make that statement?  7 MR. JOSEPHSON: Yeah. The time period  8 that we're talking about for good faith and for  9 willfulness as it relates to that particular  10 objection is going to be 2011 to the present.  11 MS. DINKEL: I don't know that it  12 would go all the way to the present, but 2011 would  13 be okay to start.  14 MR. JOSEPHSON: Sure. And at least  15 through the filing date of the lawsuit.  16 MS. KOEHLER: This is Renee. So we'll  17 update and supplement that response to include the  18 answer to the question that will go back to 2011, if  19 that answers your question.  20 MR. JOSEPHSON: It does. And then  21 your stop date will be what?  22 MS. KOEHLER: If there was a different  23 decision, then I would think that would be a new  24 date, the start date.  25 MR. JOSEPHSON: It would. I don't</p>	<p style="text-align: right;">Page 38</p> <p>1 disagree, except that the 3 C asks about when that  2 decision would have been tested for compliance. And  3 so it may be that it wasn't tested from inception to  4 2017 and then hadn't been tested again; but to the  5 extent that it was reviewed, for any reason, for  6 compliance, we would ask that you include that  7 information in your supplementation.  8 MS. KOEHLER: We'll do that.  9 MR. JOSEPHSON: And then -- and I  10 assume, kind of consistent with our discussion last  11 week, to the extent that there is information  12 pertaining to this subject that is privileged or you  13 are not waiving privilege at this point, that is  14 stuff that you will log for?  15 MS. KOEHLER: Yes, absolutely. I was  16 just going to say I think a lot of these issues will  17 be ironed out when you have our supplement.  18 MR. JOSEPHSON: Okay. I hope so.  19 And then for purpose of -- and this  20 kind of relates to the time period and this covers  21 the requests in 2, 10, 14, 19. Just start with  22 those.  23 I assume that the -- our agreement  24 that you will identify all of the inspectors,  25 subject to your objection, would resolve the</p>
<p style="text-align: right;">Page 39</p> <p>1 objections that you had in response to those  2 particular requests. And, again, that's 2, 10, 14,  3 and 19.  4 MS. KOEHLER: Hold on one second.  5 Yeah, so -- I'm not saying it resolves our  6 objection; but we've agreed, subject to those  7 objections, to produce anything from the group of  8 inspectors for the three-year period that you are  9 requesting.  10 MR. JOSEPHSON: Yeah, and that's a  11 better way of putting it. So thank you.  12 And then for 22 through 25, I assume  13 that right now you've got objections lodged in  14 response to those requests, in part, because of the  15 definition of the putative class member and that  16 there is a conflict that it seeks information  17 outside of the statute of limitations and so on.  18 But I just want to make sure that your  19 supplementation based on these agreements as to the  20 scope of the class and the time period, to the  21 extent it's relevant, will be reflected in your  22 supplementation of those particular requests as  23 well.  24 MS. KOEHLER: Yes.  25 MR. JOSEPHSON: Okay. And then I</p>	<p style="text-align: right;">Page 40</p> <p>1 think that -- and then for 25, that kind of goes  2 back to more of the good faith/willfulness  3 discussion that we had. And so for that, the time  4 period -- or at least I would suggest that the time  5 period be 2011 until the lawsuit was filed.  6 MS. KOEHLER: Yes.  7 MR. JOSEPHSON: Okay. All right.  8 Interrogatories -- I'm moving on now to page 5, the  9 section Interrogatory No. 7 through 10, if that's  10 okay, unless y'all had any other questions. Are you  11 okay to move on?  12 MS. DINKEL: Yeah, totally.  13 MR. JOSEPHSON: Okay. So  14 Interrogatory No. 7 deals with your affirmative  15 defense No. 4 and right now you've got an objection  16 on grounds of privilege, attorney-client work  17 product. You say that the interrogatory -- the  18 contention interrogatory is premature at this stage  19 of litigation.  20 And so I would like, at least -- it's  21 our view that the objections to that particular  22 interrogatory are improper and we would ask you to  23 go ahead and supplement the interrogatory or amend  24 your response to actually include an answer to  25 support that affirmative defense that you pled.</p>

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1 MS. KOEHLER: So we are removing the  
2 attorney-client privilege objection at this time. I  
3 still think it's premature and it's better to infer  
4 at deposition but I'm not withholding any documents  
5 and you will see that in my response and you will  
6 also see, you know -- I also cite you to our  
7 response in opposition to the Motion for  
8 Certification which will give an extremely thorough  
9 support for this affirmative defense. So any  
10 document that we are relying on will have already  
11 been produced in discovery; and if I have anything  
12 else that's going to go with my motion, it will be  
13 produced.

14 MR. JOSEPHSON: I appreciate all of  
15 that, but we are asking you to supplement or amend  
16 this response with an actual answer and are asking  
17 you to do that now so that -- or tell us that you  
18 are not going to and we can take it up with the  
19 Court. I just don't want to wait around and if you  
20 have a response, you know, I think we're entitled to  
21 it and we're certainly entitled to know the  
22 documents, if you are relying on documents, in lieu  
23 of providing an actual response because the  
24 documents contain information that's responsive and  
25 can be -- and if the answer can be derived from

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1 those documents, I would like you to say that. I  
2 don't want to have to guess.

3 MS. KOEHLER: I will do my best to  
4 supplement that.

5 MR. JOSEPHSON: Do you know when we  
6 can get your supplementation?

7 MS. KOEHLER: I already told you on  
8 the phone last time that we would supplement these  
9 this week, right?

10 MR. JOSEPHSON: Yes, but we hadn't  
11 reached the specific deficiencies and so I don't  
12 mind if you want to refer back to the discussion  
13 last week. I just want, at least, our discovery  
14 dispute record to be clear that this particular  
15 interrogatory will be supplemented without the  
16 objection and that you will do it this week.

17 MS. KOEHLER: Yes, I will do it this  
18 week.

19 MR. JOSEPHSON: Okay. Interrogatory  
20 No. 8 deals with the legal and factual bases for the  
21 defendant's fifth affirmative defense and in the  
22 fifth affirmative defense you assert that the class  
23 is overbroad and that the classes failed to exclude  
24 supervisors and officers of the company. And so, I  
25 guess, are you able to tell me more about what you

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1 mean with that objection?

2 MS. KOEHLER: You want me to put a  
3 case cite, or like what are you looking for?

4 MR. JOSEPHSON: No, no. I mean, you  
5 said it doesn't exclude supervisors and officers of  
6 the company. Are you referring to people -- sorry.  
7 Go ahead.

8 MS. KOEHLER: To the extent that the  
9 class would have been inclusive of that, which was  
10 more applicable at the time prior to you narrowing  
11 your punitive class definitions. So at the time  
12 when the original answer was given, the class was  
13 very broad and it could have potentially included  
14 supervisors or other individuals who wouldn't have  
15 been proper in accordance with the case law. So  
16 that's where that comes from.

17 I'm obviously going to be  
18 supplementing that now that you've narrowed your  
19 class.

20 MR. JOSEPHSON: Is that objection  
21 going to stand, or are you withdrawing it?

22 MS. KOEHLER: Well, I'm standing on  
23 the objection to the extent it ever becomes relevant  
24 but I'm going -- you'll see when you get these.  
25 Like, I don't know if this is a productive use of

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1 time; but I'm not withholding any documents based on  
2 these objections.

3 MR. JOSEPHSON: I know, but this is an  
4 interrogatory and so --

5 MS. KOEHLER: I'm not sure what you're  
6 asking of me, because I -- you know, I told you to  
7 the extent that your class would include  
8 supervisors, that would be improper.

9 MR. JOSEPHSON: Uh-huh, but --

10 MS. KOEHLER: And I mean --

11 MR. JOSEPHSON: Are you still  
12 maintaining that objection? Do you still feel like  
13 it includes supervisors and officers as drafted?

14 MS. KOEHLER: I'm not  
15 (telephone/technical difficulty) -- what you're  
16 going to do.

17 MR. JOSEPHSON: Huh?

18 MS. KOEHLER: So, I mean, if it's  
19 narrowed to purely inspectors, at this point then  
20 likely not but we will still keep the objections to  
21 the scope of your current class, obviously given the  
22 fact that it is our position that it is overly  
23 broad, given the welds and the utility and the  
24 coating inspectors as well.

25 MR. JOSEPHSON: Okay. So are you

<p style="text-align: right;">Page 45</p> <p>1 going to amend this affirmative defense or you are 2 saying -- I guess I'm not clear. Are you keeping 3 the affirmative defense? 4 MS. KOEHLER: Yeah, no, but you didn't 5 amend your complaint yet; so my affirmative defenses 6 have to stand based on the complaint that's in 7 place. So if you amend your complaint, I will amend 8 my affirmative defenses. I mean, I can't amend 9 based on your motion. I mean, that's the issue 10 we're facing here is your complaint still remains as 11 drafted. And so to some extent, I stand on my 12 affirmative defenses, given that that's still there. 13 And you could change your motion at any time. 14 MR. JOSEPHSON: I could. But do you 15 think with our existing motion, that there is still 16 a conflict? 17 MS. KOEHLER: Potentially, given -- 18 you know, it's our position that your class is still 19 overly broad but, like I said, I'm not withholding 20 any documents on it and if you amend your complaint 21 to mirror your motion, I would be happy to 22 reevaluate my defenses. 23 MR. JOSEPHSON: I know, but this 24 interrogatory asks you to provide the information 25 that supports your affirmative defense and so what</p>	<p style="text-align: right;">Page 46</p> <p>1 is the information or can you supplement your 2 interrogatory to identify the documents and/or 3 information that you think supports your fifth 4 affirmative defense? 5 MS. KOEHLER: I'll supplement as I see 6 fit and then you will decide whether -- what you 7 want to do with that. 8 MR. JOSEPHSON: Okay. But you are 9 going to supplement it this week? 10 MS. KOEHLER: Yeah, I said I would get 11 you a supplement of all of this. Like I said, I 12 don't know that this is a productive use of time. 13 MR. JOSEPHSON: Well, we talked last 14 week about the general deficiencies and these are 15 specific and I just thought it would be better for 16 us to have a clear record as to what you're going to 17 do with each of these affirmative defenses. 18 No. 9 asks you to state the basis, 19 both legal and factual, supporting your eighth 20 affirmative defense and identify any documents 21 supporting the same. And your eighth affirmative 22 defense claims that the plaintiff is similarly 23 situated to any individuals who may be attempting to 24 represent and that the plaintiff and the members of 25 the classes aren't similarly situated.</p>
<p style="text-align: right;">Page 47</p> <p>1 And then it goes on to say that the 2 potential claims of the purported class members, 3 which are based on alleged misclassification as an 4 exempt employee, reflect variability and lack 5 commonalty, lack predominance, and lack typicality, 6 and that they're subject to individualized defenses. 7 Do you plan to remove any of your 8 objections to this particular interrogatory which 9 right now are attorney-client privilege and work 10 product prematurity? 11 MS. KOEHLER: This goes exactly 12 similar to our prior conversation. Yes, I -- I'm 13 not removing the prematurity objection; but, like I 14 said before, I'm not withholding any documents based 15 on those objections. 16 So we'll update the response 17 accordingly; but, again, this is based on the 18 current complaint. 19 MR. JOSEPHSON: I understand that, but 20 what's the prematurity objection about? Like, I 21 didn't see that in Rule 33. 22 MS. KOEHLER: I mean, it's early in 23 the case. We haven't had depositions. We haven't 24 exchanged full discovery. You've already changed 25 your purported class.</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. JOSEPHSON: Well, I narrowed it. 2 I don't know that that's changing it. 3 I guess what is it that you are 4 claiming makes the named plaintiff not similarly 5 situated to the class that he is attempting to 6 represent and that plaintiff and the putative class 7 members aren't similarly situated and that -- 8 MS. KOEHLER: Are you ask- -- 9 MR. JOSEPHSON: I mean, you've pled a 10 lot of things in your eighth affirmative defense and 11 you haven't provided any information to explain 12 that, state the basis, as we asked. 13 And so are you going to now provide 14 that to us or is it something that has to be taken 15 up with the Court? 16 MS. KOEHLER: You asked me that 17 question based off the way your complaint is pled or 18 the way your motion is pled, because -- 19 MR. JOSEPHSON: Well, I thought that 20 when we spoke last week, that we were in agreement 21 that we had narrowly defined the class and that that 22 had -- that would now allow you to answer some of 23 the discovery that you weren't able to answer. 24 And so I'm asking, is Interrogatory 25 No. 8 an interrogatory that you can now answer,</p>



<p style="text-align: right;">Page 49</p> <p>1 knowing that the class has been defined in our 2 Motion for Conditional Certification? 3 MS. KOEHLER: Yes, I will supplement 4 my answers but you have -- yes. That's it. I will 5 supplement the answers. 6 MR. JOSEPHSON: Okay. And will your 7 supplementation explain why you think there's 8 variability and lack of commonalty and predominance 9 and typicality? 10 MS. KOEHLER: I will do my best. 11 MR. JOSEPHSON: I know. And I know 12 you will and I appreciate that; but if there was a 13 part of your answer, for example, that you didn't 14 intend to supplement and you could let us know, I 15 think we would appreciate it. 16 MS. KOEHLER: I -- no, I intend to 17 supplement my answer but, again, you are dealing 18 with a complaint that's different from a motion. 19 MR. JOSEPHSON: Is there any part of 20 your eighth affirmative defense that you are not 21 going to address in response to Interrogatory No. 9? 22 MS. KOEHLER: I don't believe so. 23 MR. JOSEPHSON: And Interrogatory 24 No. 10 asks you to state the basis, both legal and 25 factual, supporting your sixteenth affirmative</p>	<p style="text-align: right;">Page 50</p> <p>1 defense and identify any documents supporting the 2 same. And your sixteenth affirmative defense says 3 that plaintiff in any class or collective member is 4 or was exempt from the overtime and under Federal 5 law and state law under the administrative 6 professional executive exemption or combination 7 exemption or highly compensated exemption, those are 8 a lot of exemptions to claim. 9 I mean, is there -- what are you 10 really claiming is the exemption that's applicable 11 to the inspector universe? 12 MS. KOEHLER: Yeah, we'll supplement. 13 MR. JOSEPHSON: But what are you 14 claiming? Is it more than one? Is it -- like, what 15 are we dealing with, from your perspective? 16 MS. KOEHLER: Again, subject to our 17 objections that the inspectors are even similarly 18 situated, we will spell out the specific exemptions 19 as they apply to the different inspector positions. 20 Of course (telephone/technical difficulty) -- an 21 individual determination. 22 MR. JOSEPHSON: But what you are going 23 to do is if you think there is a weld inspector, you 24 are going to say these -- these exemptions apply to 25 this type of inspector, something to that effect,</p>
<p style="text-align: right;">Page 51</p> <p>1 and here is why. 2 MS. KOEHLER: We're going to 3 supplement the answer. We might not do it exactly 4 how you want us to do it, but we will be 5 supplementing now that you narrowed your purported 6 class. 7 MR. JOSEPHSON: I understand. But, I 8 mean, are you going to tell us which exemptions you 9 think apply to the different inspector types and the 10 documents or information that -- that support that? 11 MS. KOEHLER: Yeah. 12 MR. JOSEPHSON: Okay. And are you 13 going to remove your objections to Interrogatory No. 14 10? 15 MS. KOEHLER: Well, we already told 16 you we still have objections to Interrogatory No. 17 10. So -- 18 MR. JOSEPHSON: What are you going to 19 continue to object to? 20 MS. KOEHLER: I misunderstood you. I 21 think -- I thought -- 22 MR. JOSEPHSON: No, no. What 23 objections to Interrogatory No. 10 are you going to 24 assert? 25 MS. KOEHLER: I don't believe we will</p>	<p style="text-align: right;">Page 52</p> <p>1 be asserting any at this time. But if I need to, I 2 will respectfully respond. 3 MR. JOSEPHSON: Okay. All right. So 4 the next category or request for production, No. 3 5 and 4 -- and I think we've reached an agreement on 6 these two requests which asks for this data and 7 information pertaining to the Illinois and 8 Massachusetts class; and it's my understanding from 9 our conversation last week that you are going to 10 supplement 3 and 4 with the actual class information 11 for all of the inspectors who worked in Mass. or 12 Illinois during the statutory time period. 13 MS. KOEHLER: We're going to be 14 supplementing for the list of inspectors for that 15 time period, for the three-year time period. 16 Just so you know, we're not aware at 17 this time of -- our client continues to find a 18 method or means; but there is no document that lists 19 by an employee's workweek the location they worked 20 at. So we intend on doing the same thing we did for 21 you when we just had the weld inspectors which is on 22 the last column, I believe, we listed the different 23 states in which they worked. 24 MR. JOSEPHSON: Right. And I 25 appreciate that. You have locations of work on</p>



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1 that, the last date worked, what their employee  
2 number was, and the type of inspector that you said  
3 that they were.

4 And so -- and I appreciate that and I  
5 guess to identify where each person would have  
6 worked in any particular time period, it would just  
7 require going through those different daily work  
8 reports and connecting those work reports with the  
9 individual and the location.

10 MS. KOEHLER: The actual time sheets  
11 have the locations and we're trying to find some  
12 sort of a printout that will explain the job code  
13 and where that's located, if it's not already  
14 implied by the name of the job.

15 MR. JOSEPHSON: That would be helpful.

16 MS. KOEHLER: We're looking on trying  
17 to get a key, so to speak, that explains the  
18 location of the project that they worked on.

19 MR. JOSEPHSON: Yeah, that would be  
20 great.

21 MS. KOEHLER: We're also -- on the  
22 issue of that list, we are also supplementing to  
23 give you hire dates because that will give you an  
24 idea too about where they fall as far as the statute  
25 of limitations that you are purporting.

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1 MR. JOSEPHSON: Okay. That would be  
2 helpful. And is your ETA on that this week?

3 MS. KOEHLER: Yeah. So my hope was to  
4 have this list to you tomorrow so at least you can  
5 have that list prior to -- you know, with enough  
6 time to look at it, even if we don't have all the  
7 documents available and Bates-stamped and ready to  
8 go until Friday.

9 MR. JOSEPHSON: Okay. That would be  
10 fine.

11 MS. KOEHLER: We're also -- just so  
12 you know schedulewise, we're also meeting with our  
13 client tomorrow. So if we don't get to it until  
14 Wednesday morning, we just didn't get enough time to  
15 turn it back around.

16 MR. JOSEPHSON: Okay.

17 MS. KOEHLER: Meaning that list.

18 MR. JOSEPHSON: Sure. I understand.  
19 But I think your outside deadline is to get it all  
20 to us this week.

21 MS. KOEHLER: By the end of the week.  
22 Yeah.

23 MR. JOSEPHSON: That's fine.

24 Okay. Request for Production 7  
25 through 9 pertain to the master services agreements

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1 and addendums thereto and the contracts or  
2 agreements which may be the same thing as the master  
3 services agreements.

4 And my understanding from our  
5 conversation last week was that -- that you aren't  
6 able to produce that information because of terms or  
7 restrictions in those terms which prevent you from  
8 disclosing that information to third parties such as  
9 ourselves, right?

10 MS. KOEHLER: Yes.

11 MR. JOSEPHSON: I think you said you  
12 were legally prohibited from providing the  
13 information.

14 MS. KOEHLER: That's my understanding,  
15 based on the contract language, that we wouldn't be  
16 able to provide that to you.

17 MR. JOSEPHSON: Do you know if someone  
18 within EN is going to reach out to those clients to  
19 see if we can't get the information produced,  
20 subject to our protective orders?

21 MS. KOEHLER: First of all, I'm not  
22 going to disclose any of our attorney-client  
23 communications, nor our work product.

24 MR. JOSEPHSON: I don't think I'm  
25 asking you to. If you think -- is somebody within

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1 that organization going to attempt to get permission  
2 to disclose that -- those documents, subject to our  
3 protective order?

4 MS. KOEHLER: If I answered your  
5 question and I'm presuming that -- how are you doing  
6 on your subpoena request with respect to the third  
7 parties?

8 MR. JOSEPHSON: Doing how, like have  
9 they been served? Is that what you are --

10 MS. KOEHLER: Do you have any?

11 MR. JOSEPHSON: I have not had any  
12 conversations. I haven't -- say it again?

13 MS. KOEHLER: Have you guys received  
14 any of the documents?

15 MR. JOSEPHSON: No, we haven't. We  
16 haven't. But I will certainly produce them when we  
17 do.

18 MS. KOEHLER: What was the deadline  
19 that they had to respond by? Do you know that?

20 MS. JONES: January 22nd.

21 MR. JOSEPHSON: Could you hear Taylor?  
22 She said January 22nd.

23 MS. KOEHLER: So they haven't served  
24 you with any objections or anything at this point,  
25 then?

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1 MR. JOSEPHSON: That's right. But I  
2 do think if -- I mean, again, if you have folks on  
3 your side that can have that conversation about the  
4 confidentiality part of it, I think that would help  
5 move the ball forward, maybe let those folks know  
6 that we can certainly keep the documents  
7 confidential, pursuant to our protective order.

8 And if there is some other impediment,  
9 you know, we're obviously happy to work with whoever  
10 we need to, to try to resolve that issue. But we do  
11 think it's the kind of information that we should be  
12 entitled to.

13 MS. KOEHLER: I think you can take  
14 that up with your subpoena responses. However you  
15 handle that is up to you.

16 MR. JOSEPHSON: I will, and I  
17 appreciate that. But I would -- I do think there is  
18 an argument to be made that that kind of information  
19 is within your possession, custody, and control and  
20 that there is an obligation on your part to procure  
21 the release of those documents. And even if it's  
22 done in a way that requires some heightened level of  
23 protection, you know, I still think it's important  
24 to try to get them.

25 And since you are claiming that you

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1 can't provide them because of a term in the  
2 agreement, I think it's incumbent on EN to at least  
3 make the effort to try to produce what it can in the  
4 meantime.

5 MS. KOEHLER: So my understanding is  
6 I don't have the authority to do that.

7 MR. JOSEPHSON: But when you say you,  
8 are you talking about like you as an individual or  
9 EN doesn't have the authority to --

10 MS. KOEHLER: Our client does not have  
11 the authority to disclose that information. So EN  
12 Engineering does not have the authority to disclose  
13 that information.

14 MR. JOSEPHSON: But are there any,  
15 like -- we touched on this, I think, last week. You  
16 guys told me you gave notice to whoever you needed  
17 to give notice to, I think, about the request.

18 Is there anything that we can do on  
19 our end to address any concerns about the  
20 confidentiality of the documents, you know, further  
21 our agreement to protect them under the protective  
22 order or something to that effect?

23 MS. KOEHLER: I think that you need to  
24 take that up with your subpoena request and to the  
25 entity that is maintaining the confidentiality of

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1 the document.

2 MR. JOSEPHSON: And we can certainly  
3 do that, but just to kind of run this issue to the  
4 ground, I mean, you guys have not had any of those  
5 communications with the third parties, you being --

6 MS. KOEHLER: I'm not going to  
7 disclose my work product to you. I've already gone  
8 so far as to tell you that we've given notification.

9 MR. JOSEPHSON: Okay. You also  
10 objected that the invoices from the third party to  
11 ENE or vice versa, that those -- those are  
12 confidential and can't be produced.

13 MS. KOEHLER: Correct.

14 MR. JOSEPHSON: And so the invoices  
15 themselves, is that a provision of the MSA? I've  
16 just never seen that before.

17 MS. KOEHLER: Again, I'm not going to  
18 go through the provisions of the MSA with you.

19 MR. JOSEPHSON: I know, but you are  
20 withholding informa- -- let me just say this: In  
21 your supplementation where you have a withholding  
22 statement, you are going to list these documents in  
23 that withholding, right?

24 MS. KOEHLER: So with the specific  
25 provision, I would be happy where that question is

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1 asked, to update the response that we're withholding  
2 any invoices.

3 MR. JOSEPHSON: No, I know you are  
4 withholding them; and I know you are withholding the  
5 MSAs. But to the extent that we've requested a log  
6 of what's being withheld, is that something that you  
7 would agree to include in that log so we know  
8 exactly what we're fighting over?

9 MS. KOEHLER: We'll respond  
10 accordingly that we're not producing the invoices  
11 that you are requesting. I don't know what else you  
12 expect beyond that.

13 MR. JOSEPHSON: I think some effort to  
14 quantify the number of pages being withheld and  
15 quantify the number of documents being withheld,  
16 some type of -- something that identifies what the  
17 document is, how many pages it is, and why you think  
18 it's not being -- it doesn't have to be produced. I  
19 think that would be useful in kind of narrowing the  
20 issue for the Court.

21 MS. KOEHLER: So that really has  
22 nothing to do whatsoever with any kind of a  
23 privilege log that would be required. It's just  
24 plain and simple. We're not producing the invoices.  
25 To go through and belabor and count how many pages

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1 are the invoices for how many different projects  
2 over the course of three years is completely  
3 burdensome.

4 MR. JOSEPHSON: Well, but you are not  
5 even producing anything. I mean, you are not giving  
6 us the basics. And you are saying you are not doing  
7 it because of the contractual nondisclosure  
8 provisions, and then you object to relevance and  
9 other things as well.

10 MS. KOEHLER: Right.

11 MR. JOSEPHSON: I just wanted to know  
12 what we're fighting about; and if you have the  
13 ability to quantify it, that's great. If you are  
14 refusing to, that's okay. We can take that up with  
15 the Court. I was just hoping to be able to, at  
16 least, narrow that issue for the Court.

17 MS. KOEHLER: Not on the invoices, no.

18 MR. JOSEPHSON: Is that true with the  
19 MSAs as well? I'm sorry. You cut out. What did  
20 you say? Hello?

21 MS. KOEHLER: I said "yes." I'm sorry  
22 if you can't hear me.

23 MR. JOSEPHSON: Yeah, it cut out.

24 Let me ask you this: Do you have an  
25 attorney that you've been dealing with at these

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1 companies that we can reach out to or contact?

2 MS. KOEHLER: No, like I said, we gave  
3 proper notice under the contract provisions; and  
4 that's -- that's that.

5 MR. JOSEPHSON: Okay.

6 MS. KOEHLER: I do think, like, for  
7 example, you could probably do a LinkedIn search or  
8 even a company search. Like specifically for Ameron  
9 you can probably find out who their general counsel  
10 is. I don't know who you sent your subpoena to, but  
11 I'm pretty sure that's all public record.

12 MR. JOSEPHSON: Right, but if you have  
13 a contact there that you've been in touch with,  
14 that's not something you are going to reveal to us?

15 MS. KOEHLER: I just told you you  
16 could do the same thing I did, which is look at  
17 LinkedIn.

18 MR. JOSEPHSON: I know. I mean, these  
19 are both big companies. If there is somebody that  
20 is working on this that you've been communicating  
21 with and you have their name and phone number, I'm  
22 happy to reach out to them to kind of move the ball  
23 forward on this issue. Seems like one we could work  
24 out.

25 MS. KOEHLER: I don't have anybody to

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1 give you contact information for.

2 MR. JOSEPHSON: So you would agree  
3 then, at least, on Request 7 through 9 and 21, we're  
4 at an impasse? Hello?

5 MS. KOEHLER: I said "yes." I'm sorry  
6 it's not coming through.

7 MR. JOSEPHSON: It just sounded like  
8 silence, crickets.

9 MS. KOEHLER: I said "yes." We're at  
10 an impasse on those.

11 MR. JOSEPHSON: All right. 12 and 13  
12 go back to the identification of the class members  
13 in Illinois and Massachusetts and we addressed this  
14 earlier and I think we've reached a consensus on  
15 that.

16 Is there anything about those  
17 particular requests that you think we're not in  
18 agreement on from y'all's perspective?

19 MS. KOEHLER: Not that I'm aware of,  
20 based on what we've already said earlier.

21 MR. JOSEPHSON: Okay. And then 18, we  
22 talked about it with respect to the interrogatories  
23 and what it is you are going to rely on to show that  
24 they are not similarly situated and that is  
25 something that's going to be addressed in your

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1 supplementation of 'rogg -- I guess it's like 7  
2 through 9.

3 MS. KOEHLER: We already answered this  
4 originally by saying that, you know, you can look at  
5 a job description, the daily log, the daily job  
6 reports. None of that's changed.

7 MR. JOSEPHSON: Right, but there is  
8 only one job description for the inspector position,  
9 that I've seen. Is that right?

10 MS. KOEHLER: Yeah.

11 MR. JOSEPHSON: Do all inspectors get  
12 this -- get paid with the straight-time system?

13 MS. KOEHLER: So we're not here to  
14 answer your questions. We're here to talk about the  
15 discovery responses and the deficiencies you've  
16 raised. So let's move on.

17 MR. JOSEPHSON: Hold on.

18 MS. KOEHLER: You are going to let me  
19 finish. For once you are going to let one of us  
20 finish our sentences and get a word in edgewise.

21 MR. JOSEPHSON: But you cut me off.

22 MS. KOEHLER: You just did it again.  
23 Let me finish, please.

24 We're here to discuss the deficiencies  
25 that are raised in your January 7, 2020 letter.

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1 This is second day of doing this. I'm putting time  
2 aside to do that. We're going to supplement areas  
3 of the discovery that we've already committed  
4 several times now of supplementing.

5 We're not going to answer any  
6 questions regarding the factual basis of this  
7 lawsuit in this discussion.

8 MR. JOSEPHSON: Well, how can you  
9 confer if you don't talk about the facts that you  
10 are relying on?

11 MS. KOEHLER: I just answered your  
12 question. Do you have a particular request now that  
13 you are asking whether or not we're going to  
14 supplement?

15 MR. JOSEPHSON: Yeah, in 18, I was  
16 asking if the inspectors are all paid according to  
17 the straight-time system that is at issue.

18 MS. KOEHLER: 18 does not ask that  
19 question; and, again, I'm not a deponent. We will  
20 be responding to the discovery requests in the  
21 manner that we've already stated.

22 MR. JOSEPHSON: Well, let me ask it  
23 another way. You are not sworn in, and I agree you  
24 are not a deponent.

25 But is everybody that's an inspector

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1 paid using the straight-time system? I mean, is  
2 that something that you are claiming makes these  
3 folks not similarly situated?

4 MS. KOEHLER: Again, I'm not going to  
5 answer your questions. Okay?

6 We will supplement our discovery. You  
7 have just recently reduced the purported class; so  
8 we're going to take that into account when we do  
9 supplement. Have I sat here and had a chance to  
10 look at the pay for every person that we're  
11 supplementing for at this point? No, I have not had  
12 that opportunity. So I cannot answer your question.

13 MR. JOSEPHSON: Will you supplement to  
14 say whether or not the inspectors are all paid the  
15 same way?

16 MS. KOEHLER: No. There is not a  
17 specific discovery request, that I'm aware of, that  
18 asks that question. You are more than welcomed  
19 to --

20 MR. JOSEPHSON: I'm sorry. Go ahead.

21 MS. KOEHLER: There is not a specific  
22 discovery request, that I'm aware of, that asks that  
23 question. We will be supplementing the discovery  
24 responses.

25 MR. JOSEPHSON: I think that there are

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1 a whole bunch of requests that asks you why you  
2 think people aren't similarly situated, and I'm just  
3 asking you to clarify. Are you claiming that they  
4 aren't similarly situated because they are all paid  
5 according to a different compensation system, or is  
6 that something that's not part of the equation?

7 MS. KOEHLER: I don't know the answer  
8 to that question at this point. Now that you've  
9 narrowed your purported class, I do not know the  
10 answer to that question.

11 MR. JOSEPHSON: Well, we would like  
12 your supplementation to address whether you are  
13 claiming that the inspectors were paid something  
14 other than straight time for overtime.

15 MS. KOEHLER: And I will look at the  
16 discovery requests; and if that is a specific  
17 request, we will supplement accordingly.

18 MR. JOSEPHSON: Okay. I just don't  
19 want to see it in opposition to certification when  
20 we've asked for what it is you are claiming as it  
21 relates to being similarly situated.

22 MS. KOEHLER: Well, because of the  
23 timing of your narrowing of the scope and the timing  
24 of when we've responded to the discovery based on  
25 the overly broad scope in your complaint, which

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1 still hasn't been amended, the likelihood of that  
2 happening is at your own creation and it probably  
3 will happen that way.

4 MR. JOSEPHSON: Well, for example,  
5 when you claimed that this DOL inspection formed the  
6 basis of your good faith defense, were you doing  
7 that for a particular type of inspector or for  
8 inspectors as a whole?

9 MS. KOEHLER: The discovery will  
10 establish that.

11 MR. JOSEPHSON: Well, I know, but this  
12 is an affirmative defense that you've pled and so I  
13 feel like you are being a little bit evasive, and  
14 all I'm asking is are you claiming that all the  
15 inspectors are paid the same or are you claiming  
16 that they get paid according to different types of  
17 compensation systems?

18 MS. KOEHLER: That's the same question  
19 you've asked me, just a different way, probably  
20 three times in this call, of which I've responded  
21 I've not had an opportunity to look at the pay for  
22 everybody now in your narrowed purported class. So  
23 I don't know the answer to that question.

24 MR. JOSEPHSON: Okay. So it was one  
25 of those defenses that you maybe haven't had a

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1 chance to go back and revisit?

2 MS. KOEHLER: So, again, our  
3 affirmative defenses are based on the complaint as  
4 it's currently pled. We're trying to -- we're  
5 trying to make things a little more comprehensible  
6 by responding with supplemental discovery now that  
7 you have narrowed that purported class.

8 MR. JOSEPHSON: Okay. And I don't  
9 know if it's a bad connection on y'all's end, but  
10 you are breaking up a little bit. And if we have  
11 the same problem, just let me know and I will repeat  
12 myself.

13 On Request for Production No. 26, this  
14 deals with CAFA jurisdiction. I guess, is -- does  
15 your position on CAFA jurisdiction change with the  
16 agreement to provide information about all the  
17 inspectors?

18 MS. KOEHLER: Don't have jurisdiction  
19 under that; so I'm not sure how that would change.

20 MR. JOSEPHSON: Well, but I didn't  
21 know if it was you were limiting it to a particular  
22 group of inspectors or something else and now that  
23 we've reached a consensus on the universe of  
24 inspectors, do you still contend that there is not  
25 CAFA jurisdiction?

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1 MS. KOEHLER: I said "yes." I don't  
2 know if that came through.

3 MR. JOSEPHSON: It didn't and I don't  
4 know -- I don't want to blame anybody for technical  
5 difficulties. Did you say that that was your --  
6 that was still your position, that there is no CAFA  
7 jurisdiction?

8 MS. KOEHLER: Yes.

9 MR. JOSEPHSON: Okay. I heard that.  
10 Thank you. It sounds like y'all are -- y'all are  
11 talking to us next to a waterfall, which I know  
12 isn't the case, but that's how it sounds on our end.

13 Request No. 27 through 31 pertain to  
14 the -- the defenses that we've talked about -- I'm  
15 sorry, through 30 -- pertain to the defenses that  
16 we've talked about earlier. And my understanding is  
17 that those interrogatories and the corresponding  
18 requests are part of what you will be supplementing  
19 this week and this would cover 27 through 30. Is  
20 that right?

21 MS. KOEHLER: Did you hear that?

22 MR. JOSEPHSON: The court reporter is  
23 shaking her head no. I asked if you were  
24 supplementing 27 through 30 this week and your  
25 response was?

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1 MS. KOEHLER: Yes.

2 MR. JOSEPHSON: Okay. She got that.  
3 She is nodding affirmatively. Okay.

4 And so that -- right now I think the  
5 best thing for us to do is to get your  
6 supplementation this week, review it, and then  
7 reconvene on any outstanding issues that we may --  
8 we may have once we've had a chance to review them.  
9 Okay?

10 MS. KOEHLER: Okay.

11 MR. JOSEPHSON: And so I think that's  
12 it from our perspective. I do know that we talked  
13 about having an ESI discussion today.

14 Are you in a position where you can  
15 talk about kind of the custodians that the company  
16 has and how they have preserved -- how their  
17 documents are stored, how their information is  
18 stored?

19 MS. KOEHLER: What I think we said  
20 last week is that we would schedule that for later  
21 in the week and we needed proposed -- you were going  
22 to give us some dates. We were hoping for Thursday  
23 or Friday.

24 MR. JOSEPHSON: Okay. Is there a time  
25 on Friday that works well with y'all?

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1 MS. KOEHLER: Actually, yeah, hold on  
2 one second. We're thinking about 11 o'clock. And  
3 we're Central Standard time. I presume you are,  
4 too.

5 MR. JOSEPHSON: That's right. So  
6 Friday the 17th at 11:00.

7 MS. KOEHLER: Correct.

8 MR. JOSEPHSON: That would be great.  
9 All right. We will circulate a call-in number for  
10 that call and we will visit with you then. Okay?

11 MS. KOEHLER: Michael, do you intend  
12 on -- with the production of the supplemental  
13 documents that's going to occur by Friday of this  
14 week, do you still intend on going forward with the  
15 30(b)(6), I believe, on the 27th?

16 MR. JOSEPHSON: I mean, the answer is  
17 yes, with the qualification that if what we get is  
18 not what, you know, we thought we would receive  
19 based on our conversations, you know, we may -- we  
20 may need to take that -- that discussion to the next  
21 level and, perhaps, get the Court involved.

22 You know, obviously we want to go  
23 forward with both depositions. That's our plan.  
24 It's booked and unless we think there is, you know,  
25 a big problem, you know, we do plan to go forward;

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<p>1 and I assume y'all are still in the same boat with</p> <p>2 Rossman on the 28th.</p> <p>3 MS. KOEHLER: Yeah, we definitely are.</p> <p>4 For us, you know, it's not canceling a flight or</p> <p>5 anything like that. So, yes.</p> <p>6 Of course if there is something with a</p> <p>7 pending motion on the 30(b)(6) we can work around</p> <p>8 that as well; but as it stands, yes, we do plan on</p> <p>9 going forward the 27th and the 28th.</p> <p>10 MR. JOSEPHSON: Okay. Sounds good.</p> <p>11 MS. KOEHLER: Thank you.</p> <p>12 (Conference call concluded at</p> <p>13 2:55 PM.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 STATE OF TEXAS</p> <p>2</p> <p>3</p> <p>4 I, Lea Abbott Sturm, Certified Court</p> <p>5 Reporter in and for the State of Texas, do hereby</p> <p>6 certify to the following:</p> <p>7 That the transcript of the conference call</p> <p>8 from page ____ to page ____ is a true record of the</p> <p>9 proceedings;</p> <p>10 I further certify that I am neither counsel</p> <p>11 for, nor related to, nor employed by any of the</p> <p>12 parties or attorneys to the action in which this</p> <p>13 proceeding was taken. Further, I am not a relative</p> <p>14 or employee of any attorney of record in this cause,</p> <p>15 nor am I financially or otherwise interested in the</p> <p>16 outcome of the action.</p> <p>17 Subscribed and sworn to on ____ day of</p> <p>18 _____, 2020.</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 Lea Abbott Sturm, TX CSR 6611</p> <p>23 Expiration Date: 4/30/22</p> <p>24 Compass Reporting Group</p> <p>25 Registration No. 795</p> <p>7020 Portwest Drive, Suite 140</p> <p>Houston, Texas 77024</p> <p>P: (844) 817-1080</p>